

Message Text

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DRAFTED BY EB/OT/STA:MCJONES:JH

APPROVED BY EB/OT/STA:WCLARK, JR.

TREAS:HSHELLEY

DOC:SLOTARSKI

EB/EWT:JBEMIS

EUR/EE:CSCHMIDT

----- 068837

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FM SECSTATE WASHDC

TO AMEMBASSY WARSAW

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E.O. 11652: N/A

TAGS: ETRD, PL

SUBJECT: ANTIDUMPING CASE -- ELECTRIC GOLF CARS FROM POLAND

REF: A) WARSAW 4548 B) WARSAW 4300 C) STATE 150979

D) STATE 35949

1. AMBASSADOR TRAMPCZYNSKI MET WITH GERALD PARSKY AND

OTHER TREASURY OFFICIALS TO REITERATE POINTS IN AIDE

MEMOIRE (REF A) ON POLISH GOLF CAR ANTIDUMPING CASE

JULY 6. DEPUTY MINISTER R. STRZELECKI WILL MEET WITH

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PETER O. SUCHMAN LATE AFTERNOON JULY 8 AND WITH PARSKY ON

JULY 9. (REFS B & C).

2. FOLLOWING IS THE TEXT OF JUNE 11 LETTER FROM IRVING

SAVELL TO DEPUTY ASSISTANT SECRETARY SUCHMAN REQUESTED IN

PARA 7 OF REF A. THE LETTER CONCERNS THE TECHNICAL PROBLEMS

OF APPRAISING GOLF CARS FOR THE PURPOSE OF ASSESSING

DUTIES, WHICH ARE RARELY DISCUSSED AT AS HIGH A LEVEL AS

IN THE POLISH CASE. ONE ASPECT OF THE PROBLEM IS THE

DETERMINATION OF FAIR VALUE. FAIR VALUE CALCULATIONS IN THE ANTIDUMPING INVESTIGATION WERE BASED ON A CANADIAN COMPANY WHICH HAS SINCE GONE OUT OF BUSINESS. FOLLOWING THE INJURY DETERMINATION OF THE INTERNATIONAL TRADE COM-

MISSION, PEZETEL SUSPENDED ITS ORIGINAL CONTRACTS WITH THE AMERICAN IMPORTERS AND CONCLUDED A TEMPORARY ARRANGEMENT WITH MELEX U.S.A. WHICH IMPORTED THE GOLF CARS INTO THE U.S. AND SOLD THEM IN TURN TO AMERICAN DISTRIBUTORS. ON JUNE 21, 1976, PEZETEL REINSTATED THE ORIGINAL CONTRACTS WITH THE IMPORTER/DISTRIBUTORS, WITH APPROPRIATE MODIFICATIONS. MR.SAVELL'S LETTER DISCUSSES ALTERNATE WAYS OF DETERMINING FAIR VALUE FOR THE PURPOSE OF ASSESSING DUTIES UNDER THESE CIRCUMSTANCES. COPIES OF THE CONTRACTS HAVE BEEN FURNISHED TO THE TREASURY FOR USE IN DETERMINING FAIR VALUE. MR. SAVELL ALSO CALLS ATTENTION TO THE REASONABLE CONDUCT OF OTHER INVESTIGATIONS, SUCH AS ANTIDUMPING AND COUNTERVAILING DUTY, UNDER THE TRADE ACT OF 1974. (REF D DETAILS THESE INVESTIGATIONS FOR 1975; A SIX MONTH UPDATE WILL BE FORTHCOMING SHORTLY. THE UPDATE WILL INCLUDE A BRIEF DISCUSSION OF AUTOMOBILE ANTIDUMPING INVESTIGATIONS WHERE SPECIAL CIRCUMSTANCE WERE BASIS FOR TENTATIVE DISCONTINUANCE OF TREASURY INVESTIGATION OF SALES AT LESS THAN FAIR VALUE; THESE SPECIAL CIRCUMSTANCES DO NOT APPLY TO POLISH GOLF CAR DUMPING FINDING.) BEGIN TEXT:

DEAR MR. SUCHMAN:

I WISH TO EXPRESS ON BEHALF OF BOTH DR. ANDREW WERNER OF THE POLISH EMBASSY, AND MYSELF AS THE RECENTLY RETAINED ATTORNEY FOR PEZETEL, OUR APPRECIATION OF YOUR COURTESY
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IN ARRANGING FOR US TO MEET WITH MR. HERBERT SHELLEY AND MISS LINDA POTTS YESTERDAY. WE REGRET THAT YOUR OFFICIAL ENGAGEMENTS PREVENTED YOU FROM HEADING THIS MEETING IN PERSON.

AT THE CONCLUSION OF OUR MEETING, DR. WERNER STATED THAT HE WOULD SEND YOU A CONFIRMATION OF OUR PRESENTATION. HOWEVER, AS YOU KNOW, HE IS LEAVING FOR WARSAW THIS WEEK-END, AND THE PRESSURE OF HIS DUTIES PRIOR TO DEPARTURE WAS SO GREAT THAT HE REQUESTED ME TO SEND THIS LETTER ON BEHALF OF PEZETEL.

WE STATED THE INTEREST OF BOTH THE POLISH GOVERNMENT AND PEZETEL TO CONTINUE TO EXPORT GOLF CARTS TO THE UNITED STATES, UNDER CONDITIONS THAT WOULD BE IN FULL COMPLIANCE WITH THE REQUIREMENTS OF THE UNITED STATES LAWS AND REGULATIONS, AND WITHOUT ANY VIOLATIONS OF THE ANTIDUMP-

ING ACT.

WE DISCUSSED THE RECENT TREASURY DEPARTMENT ACTIONS IN DISCONTINUING THE AUTOMOBILE ANTIDUMPING PROCEEDINGS BECAUSE OF UNIQUE CONSIDERATIONS, NOTWITHSTANDING CLEAR SALES AT LESS THAN FAIR VALUE.

WE ALSO DISCUSSED THE RECENT TREASURY COUNTERVAILING DUTY DETERMINATIONS IN THE CASES OF CANNED HAM AND SHOULDERS FROM THE EUROPEAN COMMUNITIES, AND FOOTWEAR FROM KOREA, WITH SIMULTANEOUS WAIVER OF COUNTERVAILING DUTIES IN BOTH INSTANCES.

WE ARE ENCOURAGED BY THESE ACTIONS, BECAUSE THEY REVEAL AN APPRECIATION OF THE COMMERCIAL, ECONOMIC AND INTERNATIONAL CONSIDERATIONS, COUPLED WITH A WARMTH AND UNDERSTANDING AND GENEROSITY OF SPIRIT.

WE TRUST WE WILL BE TREATED IN THE SAME WAY, BECAUSE OUR CIRCUMSTANCES ARE ALSO UNIQUE. PEZETEL NEVER HAD ANY INTENTION OF SELLING ITS GOLF CARTS TO THE UNITED STATES AT A DUMPING PRICE. THE CARTS WERE AT ALL TIMES SOLD AT PRICES REFLECTING ALL OF THE COSTS OF PRODUCTION, INCLUDING GENERAL EXPENSES AND OVERHEAD AND PROFIT. ONLY THE PROVISIONS OF THE LAW RELATING TO EXPORTATIONS FROM LIMITED OFFICIAL USE
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STATE-CONTROLLED ECONOMY COUNTRIES MADE IT IMPOSSIBLE FOR PEZETEL TO DEMONSTRATE THIS. NOR DID PEZETEL INTEND TO INJURE THE UNITED STATES INDUSTRY: RATHER ITS PURPOSE WAS TO MEET A CLEARLY INDICATED MARKET FOR AN ECONOMICAL LOW-PRICED GOLF CART. PEZETEL HAS INCREASED ITS PRICES TO ABOVE THE FAIR VALUE LEVEL, AND THE DOMESTIC PRODUCERS ARE FULLY RECOVERED FROM INJURY (IN ANY THERE WAS). NEVERTHELESS, BECAUSE OF THE STATE-CONTROLLED ECONOMY PROVISIONS, ADDITIONAL UNIQUE CIRCUMSTANCES EXIST IN OUR CASE, WHICH, IF NOT TAKEN INTO ACCOUNT WITH AN EVEN-HANDED APPLICATION OF THE PRINCIPLES AND EQUITABLE CONSIDERATIONS THAT PREVAILED IN THE CITED CASES, WILL EFFECTIVELY PUT PEZETEL OUT OF BUSINESS.

PEZETEL AND MELEX U.S.A. ARE NEARING THE TERMINAL POINT OF ASSEMBLING THE COMPLEX MATERIALS IN THIS CASE, AND PRESENTING THEM TO YOUR OFFICE AND/OR THE COMMISSIONER OF CUSTOMS.

AT THIS POINT WE HAVE ARRIVED AT THE FOLLOWING:

1. THE ORIGINAL CONTRACTS WERE BETWEEN PEZETEL, THE POLISH EXPORTER, AND THE VARIOUS UNITED STATES IMPORTER/DISTRIBUTORS, ALL OF WHOM WERE UNRELATED TO THE SELLER.

2. WITH THE INCEPTION OF THE ANTIDUMPING PROCEEDINGS, THE EXPOSURE OF THE UNITED STATES IMPORTERS TO DUMPING DUTIES MADE IT IMPOSSIBLE FOR THEM TO CONTINUE TO PURCHASE CARTS FROM PEZETEL UNDER THE CONTRACTS. ACCORDINGLY, PEZETEL AND THE IMPORTERS ENTERED INTO AGREEMENTS:

(A) TO SUSPEND PURCHASES UNDER THE ORIGINAL CONTRACTS.

(B) TO ENTER INTO NEW BUT TEMPORARY CONTRACTS BY WHICH PEZETEL WOULD SELL TO MELEX U.S.A., A RELATED UNITED STATES SUBSIDIARY CORPORATION, WHO WOULD IN TURN SELL THE GOLF CARTS TO THE UNITED STATES DISTRIBUTORS. THE AGREEMENT PROVIDED THAT WHEN THE TREASURY DEPARTMENT EITHER DISMISSED THE ANTIDUMPING INVESTIGATION OR FOUND FAIR VALUE, THEN THE CONTRACTS BETWEEN MELEX AND THE DISTRIBUTORS WOULD BE TERMINATED, AND THE ORIGINAL CONTRACTS BETWEEN PEZETEL AND THE IMPORTER/DISTRIBUTORS WOULD LIMITED OFFICIAL USE
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COME INTO FORCE AGAIN, ON A PRICE BASIS OF NOT LESS THAN THE FAIR VALUE SO DETERMINED, WITH EXTENSION OF TERM AND OTHER CONTRACTUAL MODIFICATIONS THAT MIGHT BE REQUIRED BY CHANGING CONDITIONS. THIS UNDERSTANDING IS NOW BEING REDUCED TO WRITING FOR PRESENTATION TO YOU.

(C) MELEX AND THE DISTRIBUTORS DID ENTER INTO CONTRACTS.

3. ALSO AT THE PRESENT TIME, PEZETEL AND THE DISTRIBUTORS ARE PREPARING WRITTEN AGREEMENTS REINSTATING THE ORIGINAL PEZETEL CONTRACTS WITH THE IMPORTER/DISTRIBUTORS, WITH APPROPRIATE MODIFICATIONS.

TREASURY MAY, ON THE BASIS OF THE ORIGINAL CONTRACTS, TEMPORARILY SUSPENDED, BUT NOW REINSTATED AS OF THE DATE OF THE TREASURY DETERMINATION OF FAIR VALUE, DECIDE THAT THE BASIS FOR COMPARISON IS:

I. PURCHASE PRICE (UNDER THE REINSTATED CONTRACT), WHICH WILL BE IN THE RANGE OF \$730/750:

-AGAINST-

FAIR VALUE, AS DETERMINED BY THE TREASURY AT THE END OF 1975.

IN THIS CASE, THE PURCHASE PRICE WOULD BE CONSIDERABLY HIGHER THAN THE FAIR VALUE.

ALTERNATIVELY, THE TREASURY MAY DECIDE TO MAKE ITS COMPARISON ON THE BASIS OF:

II. PURCHASE PRICE (AS IN POINT I ABOVE);

-AGAINST-

FAIR VALUE, USING THE END OF 1975 FAIR VALUE, BUT
ADJUSTED UPWARD BY AN INFLATION FACTOR WHICH WOULD BE THE

HIGHER OF THE CANADIAN OR UNITED STATES INDICES.

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IN THIS CASE, PURCHASE PRICE WOULD BE AT A HIGHER PRICE
THAN THE FAIR VALUE SO ADJUSTED.

THE LOGIC OF PROCEEDING ON THE POINT I BASIS IS THAT IT
IS IN ACCORD WITH THE AGREEMENT OF PEZETEL AND THE
DISTRIBUTORS, AND THEREFORE MEETS WITH THE COMMERCIAL
REALITIES. IF, HOWEVER, YOU DO NOT FIND IT POSSIBLE TO
PROCEED ON THIS BASIS, THEN WE URGE THAT YOU ACCEPT AND
PROCEED ON THE POINT II BASIS.

THE LOGIC OF THE POINT II BASIS IS THAT IT IS PRACTICABLE,
AND IS IN ACCORD WITH THE COMMERCIAL REALITIES. IT WOULD
OVERCOME THE ACCIDENT OF THE TERMINATION OF MANUFACTURE
OF GOLF CARTS BY MARATHON (IF IN FACT MARATHON DID
TERMINATE), AND WOULD ADJUST THE PREVIOUSLY DETERMINED
FAIR VALUE TO THE PRESENT MARKET.

WE ARE PLEASED TO BE ABLE TO INFORM YOU THAT THE FOB
POLAND SELLING PRICE OF THE GOLF CARTS HAS BEEN PRE-
VIOUSLY INCREASED THREE TIMES, BY 49%, TO A POINT
WHERE IT IS HIGHER THAN THE DECLARED FAIR VALUE, EVEN
AFTER ADDITIONS FOR AN INFLATION FACTOR. THIS IS A CON-
SIDERABLY HIGHER PERCENTAGE OF INCREASE THAN THE INCREASE,
IF ANY, IN THE PRICE OF THE DOMESTIC GOLF CARTS.

MY CLIENT INFORMS ME THAT IT WILL GIVE YOUR OFFICE
ASSURANCES THAT IT WILL NOT INCREASE ITS SHARE OF
THE UNITED STATES MARKET.

PEZETEL WILL ALSO GIVE YOUR OFFICE ASSURANCES THAT THE
FOB POLISH PRICES WILL BE MAINTAINED AT A LEVEL HIGHER
THAN FAIR VALUE, WHETHER CALCULATED ON THE BASIS OF THE
END OF 1975 DETERMINATION, OR ON THAT FIGURES INCREASED
BY THE INFLATION FACTOR TO THE PRESENT TIME, WHICH IS
THE DATE OF THE REINSTATEMENT OF THE ORIGINAL CONTRACTS
BETWEEN PEZETEL AND THE DISTRIBUTORS.

MY CLIENT ALSO AGREES TO COMPLY IN ALL RESPECTS WITH
THE UNITED STATES LAWS AND REGULATIONS.

PEZETEL HAS SPARED NEITHER TIME NOR EXPENSE IN ITS EFFORTS

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TO COMPLY FULLY, AND TO TAKE CORRECTIVE MEASURES TO ARRIVE
AT A PRICE THAT WOULD MEET FAIR VALUE STANDARDS.

WE HOPE YOU WILL NOT TAKE MEASURES THAT IN EFFECT WOULD
BE PUNITIVE, OR WOULD SERVE TO PUT PEZETEL OUT OF
BUSINESS.

WE TRUST YOU ARE IN AGREEMENT WITH US THAT THE CON-
SIDERATIONS OF THE UNIQUE CHARACTER OF THE CASE, AND THE
EQUITIES INVOLVED, JUSTIFY THE APPLICATION TO THE POLISH
GOLF CARTS THE SAME PRINCIPLES THAT ENABLED YOU TO ARRIVE
AT YOUR DECISIONS IN THE CITED AUTOMOBILE DUMPING CASE,
AND THE FOOTWEAR COUNTERVAILING DUTY CASE.

BE ASSURED OF OUR APPRECIATION OF YOUR COURTESY AND
COOPERATION.

SINCERELY,

IRVING SAVELL

END TEXT. KISSINGER

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